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91-1188

Supreme Court, U.S.
FILED
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

JAMES ROWLAND, et al., Petitioner,

v.

CALIFORNIA MEN'S COLONY, UNIT II
MEN'S ADV. COUNCIL, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether an organization, association, or corporation, and in particular an inmate association, may proceed in forma pauperis as a "person" within the meaning of 28 U.S.C. section 1915(a).[1/]

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1. This question was not expressly considered by the district court but was the sole issue addressed by the Ninth Circuit in its opinion. CMC Unit II Men's Adv. Council v. Rowland, 939 F.2d 854, 856, n.1 (9th Cir. 1991).

LIST OF PARTIES

When respondent filed its action, petitioner James Rowland was the director of the California Department of Corrections; petitioner James H. Gomez was the Chief Deputy Director of the Department of Corrections; petitioner Sara Bruce was the Chief of the Regulation and Policy Management Unit, Department of Corrections; and petitioner Leslie Bandaccari worked in the Institutions Services Unit, Department of Corrections.

Respondent Men's Advisory Council, California Men's Colony-West, is a voluntary association of inmates incarcerated in the California Men's Colony-West.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners James Rowland, et al., pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 29, 1991.

OPINIONS BELOW

The opinion for the Court of Appeals for the Ninth Circuit is reported at 939 F.2d 854 (9th Cir. 1991) and is reprinted in the appendix submitted with this Petition.

JURISDICTION

The Ninth Circuit rendered its opinion and entered judgment on July 29, 1991. The Ninth Circuit, after consideration of petitioners' request for rehearing en banc, denied the request on December 5, 1991. This petition is filed within 90 days of that date.

The jurisdiction of this court to review the judgment of the Ninth Circuit by means of certiorari arises under 28 U.S.C. section 1254(1).

STATUTE INVOLVED

The statute involved is subdivision (a) of 28 U.S.C. 1915, relating to proceedings in forma pauperis, which reads as follows:

> Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

With regard to the term "person" in section 1915(a), the Ninth Circuit referred to the following portions of 1 U.S.C. section 1:

> In determining the meaning of any Act of Congress, unless the context indicates otherwise-- . . . the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

STATEMENT OF THE CASE

This case involves an inmate association which was denied leave to proceed in forma pauperis by the district court. In December 1989, the Men's Advisory Council lodged its complaint with the district court. In addition to the complaint, the Men's Advisory Council filed a motion for leave to proceed in forma pauperis and a declaration supporting that application. The declaration, signed by an association officer, alleged personal poverty on the part of the declarant.

On December 22, 1989, an order was filed by the district court denying this motion. The Men's Advisory Council requested that the court reconsider its motion, but that request was denied on March 27, 1990. The Men's Advisory Council filed a timely notice of appeal on April 18, 1990.

The Attorney General of the State of California represents petitioners by reason of a July 20, 1990 order of the Ninth Circuit requiring "the Attorney General of the State of California to enter an appearance on behalf of appellees, to file a brief on their behalf, and to appear at any oral argument." The Attorney General complied

with that order and has been regarded as counsel of record since the issuance of the order. However, petitioners, the named defendants in this case, have not been served and therefore they have not yet requested the Attorney General to represent them. The only facts which are in the record are those alleged by respondent in the complaint.

STATEMENT OF FACTS

The Men's Advisory Council of California Men's Colony, West Facility (CMC), Unit II was created by Warden's General Order Number 38. As described in the complaint, the association has the following purpose and objectives:

(A) To promote the welfare of the inmates through their duly elected representatives, to analyze and properly present to the Program Administrator ("P.A.") and the Warden/Chief Deputy Warden, recommendations which may, upon approval, lead to the common and mutual benefit of all inmates of CMC.

(B) To provide inmates of CMC with representation and a voice in administrative deliberations and decisions affecting the welfare and best interest of all inmates.

(C) To provide the Warden/Chief Deputy Warden and institution administrative staff with a means whereby administrative actions, and the reasons for these actions, may be communicated and understood by the general inmate population.

The members of the Men's Advisory Council are elected from the general prison population.

Since 1949, the Department of Corrections of the State of California had maintained a program, reflected in Director's Rules Section 3180, of providing free tobacco to inmates who are without funds to purchase it. On June 16, 1989 the Department issued a memorandum which discontinued this program.

Because there are incarcerated persons with an addiction to nicotine, discontinuing the distribution of free tobacco to these inmates forces them to support their addiction in other ways. Some inmates in California Men's Colony, West Facility, Unit II have been observed scavenging cigarette butts off sidewalks, ditches, gutters, and underneath dormitory steps. These practices, as well as the practice of lighting one cigarette and allowing many inmates to take turns smoking it, create a dangerous health risk by increasing the possibility of transmitting AIDS[2/] and other infectious diseases. In addition, indigent inmates may become indebted to other inmates

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2. This and other factual assertions are presently uncontested in the record, but it must be remembered that this matter went to the lower appellate court before any discovery was undertaken or any dispositive motions were made. Moreover, there has been no opportunity to challenge the constitutional standing of the association to assert its members' rights. *See* Warth v. Seldin, 422 U.S. 490, 510 (1975).

in exchange for cigarettes, thereby risking the health and safety of those individuals. The Men's Advisory Council submitted an administrative appeal to the Warden of California Men's Colony, West Facility, requesting that distribution of free tobacco to indigent inmates be resumed. The appeal was denied on August 25, 1989.

The Men's Advisory Council attempted to file a complaint for violation of civil rights with the United States District Court for the Central District of California, through the Council's chief officer, William Cochran. The complaint named as defendants: James Rowland, Director of the California Department of Corrections; James H. Gomez, Chief Deputy Director of the California Department of Corrections, Sara Bruce, Chief of the Regulations and Policy Management Unit of the California Department of Corrections; and Leslie Bandaccari, an employee of the California Department of Corrections. The Men's Advisory Council claims that its members' federal rights were violated when the defendants repealed section 3180 prior to submission and action by the Office of Administrative Law, as required by California Government Code Section 11349. Further, the Men's Advisory Council claims that the defendants violated the Council's members' Eighth Amendment rights by creating conditions which cause mental, physical, and emotional deterioration. The Men's Advisory Council sought only declaratory and injunctive relief.

With its complaint, the Men's Advisory Council filed a motion for leave to proceed in forma pauperis, together with an affidavit executed by the Council's Chairman,

William Cochran. The declaration was a statement of Cochran's poverty. Under Warden's Order No. 38, the Men's Advisory Council is not authorized to create an account or to collect funds. On December 15, 1989, a United States Magistrate recommended that the in forma pauperis application be denied due to an inadequate showing of poverty. On December 22, 1989, the district court followed that recommendation and ordered that the application be denied. William Cochran, Chairman of the Men's Advisory Council, then requested reconsideration of the court's denial of leave to proceed in forma pauperis. Judge Takasugi denied the request for reconsideration, but indicated that the court would consider an amended application which included details of each individual's indigency.

On April 18, 1990, the Men's Advisory Council, through Cochran, filed a notice of appeal with the United States District Court for the Central District of California. The Men's Advisory Council also submitted a motion and affidavit to appeal in forma pauperis, which was denied by the district court on April 19, 1990. On July 20, 1990, the court of appeals, on its own motion and under 28 U.S.C. section 1915(d), appointed present counsel to represent the Men's Advisory Council. The court also granted the motion for leave to appeal in forma pauperis.

ARGUMENT

ASSOCIATIONS ARE NOT ENTITLED TO IN FORMA PAUPERIS STATUS UNDER 28 U.S.C. SECTION 1915

The underlying circumstances of this case are undisputed in the record, as the sole pleading in the record is the complaint. Further, there is a small and discrete body of law and legislative history which all the parties, the circuit court, and other circuit courts which have considered the subject agree is relevant.

Nevertheless, there is no unanimity as to whether section 1915(a) permits associations[3] to proceed in forma

3. There may be some confusion as to terminology without a further definition of terms. The following definition of association is derived from Black's Law Dictionary (4th ed. 1951):

> The act of a number of persons in uniting together for some special purpose or business. The persons so joining. It is a word of vague meaning used to indicate a collection of persons who have joined together for a certain object . . . An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise . . . . It is not a legal entity separate from the persons who compose it . . . .

pauperis.[4] The Ninth Circuit, having determined that there is a split among the circuits, has in candid fashion considered both sides and chosen the minority view, i.e. that associations may proceed in forma pauperis. CMC Unit II, Men's Advisory Council v. Rowland, 939 F.2d at 858 [hereinafter CMC]. Certiorari should be granted to resolve the manifest conflict among the circuits in the interpretation of the in forma pauperis statute. This Court should intervene to declare a uniform rule for the guidance of the district courts in light of the legislative history, the statutory context in which the instant litigation is raised, 42 U.S.C. section 1983, and this Court's own independent power to prescribe procedures for the efficient administration of the federal courts.[5]

4. Section 1915 appears to be a breeding ground for these peculiar and seemingly unavoidable procedural disputes. *See* Hernandez v. Denton, No. 90-1846 [section 1915(d)].

5. No constitutional issue is implicated here. The benefits of in forma pauperis are "entirely statutory." Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963); Brown v. Johnston, 99 F.2d 760 (9th Cir. 1938) and the Ninth Circuit opinion is devoid of any discussion of constitutional principles.

A. The legislative history of section 1915(a) provides no basis for permitting associations to proceed in forma pauperis.

This case turns on whether the word "person" in 28 U.S.C. section 1915(a) is interpreted to include "corporations, companies [and] associations" under 1 U.S.C. section 1. To decide that, it is necessary to establish the intent of Congress when it enacted that language. Few courts have addressed this question, and those few have disagreed, but the legislative history is not in dispute. *See* Note: Proceeding In Forma Pauperis in Federal Court: Can Corporations Be Poor "Persons"?, 62 Cal.L.Rev. 219 (1974).

Before 1959 only a "citizen" could benefit from section 1915 and it was settled law that a corporation was not a citizen for purposes of obtaining in forma pauperis status. Atlantic S.S. Corp. v. Kelley, 79 F.2d 339, 340 (5th Cir. 1935); Quittner v. Motion Picture Producers & Distributors of America, Inc., 70 F.2d 331, 332 (2nd Cir. 1934). In 1959, section 1915 was amended by substituting the word "person" for "citizen," and the legislative history is clear that the purpose of this change was only to permit resident aliens to sue in forma pauperis. However, section 1 provides that in "determining the meaning of any Act of Congress, unless the context indicates otherwise . . . the word 'person' . . . include[s] corporations, companies, associations . . . ." The question, then, is whether Congress, when it adopted the word "person," intended that word to extend the coverage of section 1915

to all entities listed in section 1 or merely to resident aliens.

The primary argument for the inclusion of associations, companies or corporations within section 1915(a) was made by Chief Judge Bazelon in his dissenting opinion in SOUP Inc. v. FTC, 449 F.2d 1142, 1143 (D.C. Cir. 1971). The Chief Judge argued that Congress should be deemed to have been aware of section 1, and that there was no indication in the legislative history of the 1959 amendment that Congress did not intend to cover corporations with "person."

Two district courts have followed Judge Bazelon's lead, both phrasing their arguments in double negatives. "Neither the language nor the legislative history of § 1915(a) indicates that a corporation composed of and serving primarily poor persons should not be allowed to proceed in forma pauperis the same as an indigent individual." River Valley, Inc. v. Dubuque County, 63 F.R.D. 123, 124 (N.D. Iowa 1974). "In this Court's view, neither the words of the statute nor its legislative history can be read to attribute to Congress an intent not to include corporations of whatever nature within the meaning of the word 'person' in this statute. [Emphasis in original.]" Harlem River Consumers Coop v. Associated Grocers, 71 F.R.D. 93, 95 (S.D. N.Y. 1976).

The courts of appeals of two circuits and three district courts, including Judge Bazelon's own court, have rejected this reasoning. FDM Mfg. Co. v. Scottsdale Insurance Company, 855 F.2d 213, 214-215 (5th Cir.

1988); SOUP Inc. v. FTC, 449 F.2d at 1142-1143 (D.C. Cir. 1971); Sears Roebuck & Co. v. C.W. Sears Real Estate, 686 F.Supp. 385, 386-388 (N.D. N.Y. 1988), *aff'd. on other grounds*, 865 F.2d 22, 23 (2d Cir. 1988); MOVE Organization v. U.S. Dept. of Justice, 555 F.Supp. 684, 690-692 (E.D. Penn. 1983); Honolulu Lumber Co. v. American Factors Ltd., 265 F.Supp. 578, 580-581 (D. Hawaii 1966), *aff'd. on other grounds*, 403 F.2d 49 (9th Cir. 1968). Petitioners note that aside from Honolulu Lumber, all of these cases considered and specifically rejected the Bazelon argument.

The legislative history detailed in the majority cases provided "compelling evidence" of Congressional intent. *See generally* 1959 U.S. Code Cong. & Admin. News 657, 2663. These courts found that the sole reason for the 1959 amendment was to allow resident aliens to proceed in forma pauperis and that there was no indication whatsoever that Congress intended to extend section 1915 to associations and corporations. Thus, while there may be perfectly sensible policy grounds for allowing impoverished corporations to proceed under section 1915, that decision should be reserved for Congress. FDM Mfg. Company, 855 F.2d at p. 214; Sears Roebuck & Company, 686 F.Supp. at 388. In sum, it appears that the opinion of the Ninth Circuit in this case is without a majority opinion precedent from any circuit court and therefore represents an anomalous rule which seriously modifies the scope of our in forma pauperis statute.

B. Section 1, by its own terms, does not automatically govern the definition of "person" in section 1915(a).

Moreover, there is no reason to automatically import the section 1 definition of "person" because the section 1 definition comes into play "unless the [statutory] context indicates otherwise". 1 U.S.C. section 1. If the context of the statute in question indicates a different meaning for "person", the statute-specific interpretation should be used. By its own terms, section 1 has no universal pretentions.

Given that section 1983 itself contains a "person-citizen" dichotomy[6/], it must be asked whether section 1983 is a context which could require a definition of

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6. Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia [Emphasis added].

"person" tailored to the statutory purpose of section 1983. This is no matter of hair-splitting. Section 1 purports to define "person" generally. Section 1983's definition is based on the Fourteenth Amendment and the constitutional definition has precedence in resolving the legal issues raised by this appeal. The Fourteenth Amendment and section 1983 contain a definition of "person" which is constitutionally mandated. The utilization of "person" as a term of art in the in forma pauperis statute and section 1983, coupled with the language of section 1, imply that section 1983's definition of those with standing to plead the section 1983 action is also determinative of those who may proceed in forma pauperis.

An example of the finding of a specialized definition of "person" within the specific terms and policies of a statute is contained in the Ninth Circuit's recent case, Crumpton v. Gates, ___F.2d___, No. 90-55117 (Nov. 4, 1991). In this case, the Ninth Circuit did not hesitate to extend the definition of "person" under section 1983 to include a fetus. The Ninth Circuit did not even consider applying section 1 to the problem. Instead, contrary to the logic espoused in other circuits, the Ninth Circuit found that the allegedly wrongful killing of the father did not occur until the fetus' birth, at which time the fetus had become a person under section 1983.

Unfortunately, there is no case on point as to whether an association is a "person" within the meaning of section 1983. In U.S. v. Martin, 866 F.2d 972 (8th Cir. 1989), the issue was whether a drug store was not a

"person" within the meaning of a statute forbidding the burglary of controlled substances from a person registered with the Drug Enforcement Administration. The court considered both section 1 and the legislative history of the criminal provision, 18 U.S.C. section 2118(b), and found that a drug store be a possible victim under section 2118(b). In Martin as in Crumpton, the specific features of the statute which underlay the action had to be considered in determining the meaning of "person" for the purposes of enforcing the statute.

In Hague v. Committee for Industrial Organization, 307 U.S. 496, 514 (1939), a civil rights suit challenging municipal actions in derogation of the rights of citizens under the Fourteenth Amendment, the Supreme Court held that corporations could not be plaintiffs. However, in California Diversified Promotions v. Musick, 505 F.2d 278, 283 (9th Cir. 1974), it was held that corporate plaintiffs had standing to sue in civil rights actions. The Supreme Court citations in support of this proposition antedated the Hague ruling. Clearly there is doubt as to when even a corporation has standing. A fortiori, there is ambiguity as to associations.

C. The instant decision creates immense practical problems of administration which remain unanswered.

The legal authority contrary to the Ninth Circuit's holding is significant. But there are practical effects of the opinion on the administration of justice in the district

courts which should also be considered. Implicit in the Ninth Circuit's discussion of which matters were not decided by its opinion is a sense of the dimensions of the changes wrought in the in forma pauperis statute. The court did not "delineate the procedure by which . . . courts are to make that indigency requirement," given "the complexities that might arise in determining whether corporations or associations are indigent." The court eschewed "a comprehensive test for determining indigency" and did not decide "the relevance of members' individual finances in determining an association's indigency." CMC at 859, n.5. In short, the court admitted that an entirely new test of indigency must be developed for the associations it freed to pursue litigation in their own names and it declined to state the terms of the new test.

For the courts denying section 1915 to organizations, determination of poverty was a major concern. The court in each case, except FDM Mfg. Company, either pierced the corporate veil or said it would have to do so if organizations were covered by section 1915. The problem is most clearly stated in Sears Roebuck & Company, supra 686 F.Supp. at 388:

> In addition to this legislative history, another consideration weighs against permitting corporations to reap the benefits of section 1915. If corporations were allowed to proceed in forma pauperis, there would exist the prospect that stockholders of a closely-held corporation might try to hide behind a corporate veil in order to avoid the costs of

litigation. This danger was touched upon in MOVE Organization, 555 F.Supp. at 691, and Honolulu Lumber, 265 F.Supp. at 581. That such a scenario would arise is so obvious that it is doubtful that Congress would not have provided some guidance to the courts concerning how deeply they should look behind the corporate structure to determine indigency if it truly intended corporations to reap the benefits of the statute.

A fortiori, if the corporation presents a substantial problem as an in forma pauperis plaintiff, a less formal organizational structure such as a voluntary unincorporated association

> presents a greater danger. Such an association does not necessarily meet the formal state standards for incorporation and the absence of compliance with such standards amplifies the danger pointed out in the Sears Roebuck case. The absence of such formalities implies an amorphousness inconsistent with efficient judicial administration.

For example, a corporation board may vote to proceed with litigation and there is no dispute that the vote represents the shareholders. Moreover, it may be determined that the board vote is the appropriate mode for authorization of the action by reference to the corporation charter. The formal corporate structure embodied in the corporation charter, read within the context of the state corporation laws, leaves no doubt as to

the legitimacy of the corporation's initiation of the legal action.

Nice questions of standing and case and controversy appear when an informal association purports to initiate legal action. In the instant case, have the members of the association approved the action and have all the members spoken in a manner which comports with some measure of due process? Assuming arguendo they have, do these members have an interest in free tobacco which merits their participation in the action? The Men's Advisory Council, is not itself affected by the facts alleged in its complaint. It is suing merely as a representative of what may be only a small portion of its members, given that some prison inmates do not smoke. McKinney v. Anderson, 924 F.2d 1500 (9th Cir. 1991). Underlying any application of an association under section 1915 are complex questions about the interrelation between members and the association which are absent in the case of a corporation. Such vexing problems should not be created and left unsolved to harry our already overburdened trial courts.

Other unanswered questions are legion. For example, it appears there is a fundamental distinction between the "corporation" cases and the prisoner association before this Court. A corporation has a legal identity, corporate officers, agents for service by process, articles of incorporation, and a defined membership.[7] An inmate

7. A corporation cannot appear pro se and must litigate through an attorney, and this rule is "venerable and widespread". Jones v. Niagra Frontier Trans. Auth., 722 F.2d 20, 22 (2d Cir. 1983). Both the Ninth Circuit and the California state courts honor this rule (Taylor v. Knapp, 871 F.2d 803, 806 (9th Cir. 1989); Rogers v. Municipal Court, 197 Cal.App.3d 1314, 1318, 243 Cal.Rptr. 530 (1988)), and there is no case contrary to the rule. *See* Southwest Express Co. v. ICC, 670 F.2d 53, 55 (5th Cir. 1982); Strong Delivery Ministry Assn. v. Bd. of Appeals, 543 F.2d 32, 34 (7th Cir. 1976); Hawkeye Bank and Trust v. Baugh, 463 N.W.2d 22, 25-26 (Iowa 1990); Walacavage v. Excell 2000, 480 A.2d 281, 284 (Pa. 1984); Oahu Plumbing v. Kona Construction, 590 P.2d 570, 572-573 (Haw. 1979).

The rationale for the rule is simple. As stated in Jones at 22, a corporation appearing pro se without attorney representation may lack the necessary professional skills and ethics. The conduct of litigation by a non-lawyer "creates unusual burdens not only for the party he represents but as well for his adversaries and the court." It is unclear how an association, an organizational form more amorphous than a corporation, may better maintain a pro se suit, let alone in forma pauperis, consistent with the logic barring corporations from proceeding in pro se.

association does not have most of these attributes. Those proceeding in forma pauperis through the association do not have to possess individual standing or proceed as a class. Indeed, the opinion sub rosa undermines the carefully constructed procedure for certifying class actions. F.R.C.P. Rules 23, 23.2.

The possibilities for evasion of standing and indigency requirements are evident. An "indigent"

association, one which was forbidden to have assets, could be created solely for the purpose of acting as a litigant for non-indigent parties. Discovery will be needlessly encumbered by the necessity to search for individuals with standing and with true cases and controversies. Our federal courts should not be confronted with a myriad of loose confederations which are in forma pauperis litigation agencies in perpetuity for whatever individual grievances some number of its members might have. CMC not only is contrary to established law but also creates an opportunity for serious abuse of the in forma pauperis statute that could ultimately undermine its effectiveness.

CONCLUSION

The legislative history of section 1915 offers no support to the inclusion of organizations within its coverage, and that such an inclusion would create serious and unresolved problems of verification of poverty, standing and case and controversy. The minority position adopted by this court will create myriad problems for the trial courts without any benefit to potential litigants. Therefore, this Court should grant the petition for certiorari and reverse the holding of the Ninth Circuit.

DATED: December 9, 1992

Respectfully submitted,

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GEORGE WILLIAMSON
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ORIGINAL SIGNED BY

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APPENDIX

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CALIFORNIA MEN'S COLONY, Unit II Men's Adv. Council,
Plaintiff-Appellant,

v.

JAMES ROWLAND, Director, JAMES H. GOMEZ, SARA BRUCE, LESLIE BANDACCARI,
Defendants-Appellees.

No. 90-55600
D.C. No. MISC-24405-R
OPINION

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted
May 9, 1991—Pasadena, California

Filed July 29, 1991

Before: Thomas Tang, Stephen Reinhardt and Charles Wiggins, Circuit Judges.

Opinion by Judge Wiggins

SUMMARY

Statutes

Reversing and remanding a district court judgment, the court of appeals held that associations are "persons" within the meaning of 28 U.S.C. § 1915(a), entitled to proceed on forma pauperis upon a showing of indigency.

Appellant California Men's Colony, Unit II, Men's Advisory Council (MAC), an inmates' organization, challenged the district court denial of their motion to proceed under forma pauperis under 28 U.S.C. § 1915(a) in a civil rights action under section 1983. The district court also denied a motion for reconsideraiton of its ruling.

[1] This case turned on whether the word "person" as used in section 1915(a) includes associations such as MAC. [2] The court agreed that the plain meaning of that section, when read in conjunction with 1 U.S.C. § 1, indicates that associations can proceed in forma pauperis if they meet the indigency requirements. [3] However, the court noted that the appellee was far from alone in reaching the conclusion that the legislative history reveals a congressional intent to deny the benefits of § 1915 to all but natural persons. A majority of courts have also concluded that federal courts are not authorized to permit associations or corporations to proceed in forma pauperis. [4] But the court found nothing in this legislative history to justify a construction of that section so flatly contrary to the statute's plain meaning. [5] The most that could be said about that history is that it indicates that Congress did not explicitly consider whether an amendment to that section would extend the statute's reach beyond citizens and aliens. Such congressional silence, however, does not constitute the type of compelling contrary evidence the court must find before abandoning a statute's plain meaning.

[6] Under the facts of this case, it was unnecessary to remand the case for the purpose of having the district court determine indigency. It was undisputed that the MAC is prohibited by prison regulation from maintaining any assets, including a bank account. Thus, not only was MAC indigent, but that state of affairs was clearly not due to any effort on the part of its members to obtain the benefits of litigation without bearing the ordinary financial burdens. On remand, then, the district court was ordered to grant the motion to proceed in forma pauperis.

COUNSEL

Charles D. Weisselberg, James H. Locklin, University of Southern California Law Center, Los Angeles, California, for the plaintiff-appellant.

Richard Thomson, Supervising Deputy Attorney General, Sacramento, California, for the defendants-appellees.

OPINION

WIGGINS, Circuit Judge:

The California Men's Colony, Unit II, Men's Advisory Council ("the MAC") appeals the district court's denial of its motion pursuant to 28 U.S.C. § 1915(a) to proceed in forma pauperis in this civil rights action brought under 42 U.S.C. § 1983. The district court denied the motion on the ground that the appellant had not made an adequate showing of indigency as required by § 1915. The court also denied the MAC's request for reconsideration of that ruling. By order of July 20, 1990, we granted the MAC's motion to proceed in forma pauperis for the purpose of addressing an issue of first impression in this Circuit: whether an organization may proceed in forma pauperis pursuant to 28 U.S.C. § 1915. The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343(3), and we have jurisdiction to review the denial of the MAC's motion under 28 U.S.C. § 1291. Because we find that the plain meaning of the statute indicates that associations may be authorized to proceed in forma pauperis, we reverse the district court's ruling.

BACKGROUND

The MAC, which was created by the warden of California Men's Colony, is an association of inmates, elected by the

general prison population, that acts both as an advocate for inmate interests and as a sort of prison administration/inmate liaison. It brought this action alleging violations of the eighth and fourteenth amendments of the United States Constitution based on the Department of Correction's June 1989 directive to all state prison wardens instructing them to discontinue the program, established in 1949, of providing free tobacco to inmates who are unable to afford it. The complaint seeks declaratory and injunctive relief to have the program reinstated.

At the time it filed the complaint, the MAC also filed a motion for leave to proceed in forma pauperis. Accompanying the motion was an affidavit signed by William Cochran, the Council's Chairman, indicating that the MAC is prohibited by prison regulations from holding any assets whatsoever. The district court adopted the magistrate's recommendation that the motion to proceed in forma pauperis be denied on the ground that the MAC had made an inadequate showing of indigency. In denying the MAC's request for reconsideration of that ruling, the court stated that "[i]f the requesting party wishes to amend its application to proceed in forma pauperis with details of each individual's indigency, the court will consider the amended application." The MAC chose to file this appeal rather than to reapply.

By order of July 20, 1990, this Court granted the appellant's motion to proceed in forma pauperis for the purpose of addressing on appeal the question whether an organization may proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).[1] We also appointed counsel to represent the appellants, and

[1]We note that our order instructed the parties to address a question upon which the district court did not expressly rule. That is, because the district court denied the appellant's motion to proceed in forma pauperis on the ground that it had not made an adequate showing of indigency, it did not decide the threshold question — which this Court instructed the parties to address in this appeal — of whether the statute authorizes an organization to proceed in forma pauperis.

directed the California Attorney General to represent the appellees.

DISCUSSION

The parties agree that the issues raised by this appeal are purely legal questions that we review de novo. *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), *cert. denied*, 469 U.S. 824 (1984).

I.

"When construing a statute, we look first to the plain meaning of the language in question." *S & M Inv. v. Tahoe Regional Planning Agency*, 911 F.2d 324, 326 (9th Cir. 1990) (citation omitted), *cert. denied*, 111 S. Ct. 963 (1991). This "plain meaning rule" is based on the view "that in the vast majority of its legislation Congress does mean what it says and thus the statutory language is normally the best evidence of congressional intent." *Church of Scientology v. United States Dept. of Justice*, 612 F.2d 417, 421 (9th Cir. 1979). When the plain language appears to settle the question, we "'look to the legislative history to determine only whether there is clearly expressed legislative intention contrary to that language.'" *S & M Inv.*, 911 F.2d at 327 (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 n.12 (1987)) (internal quotation omitted).

[1] We must apply these principles of statutory construction to the federal in forma pauperis statute, codified at 28 U.S.C § 1915, which provides in relevant part:

> **§ 1915. Proceeding in forma pauperis**
>
> (a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or

> security therefor, by a *person* who makes affidavit that he is unable to pay such costs or give security therefor.

28 U.S.C. § 1915(a) (emphasis added). This case turns on whether the word "person" as used in § 1915(a) includes associations such as the MAC. The appellant argues that the question is conclusively resolved by reference to 1 U.S.C. § 1, which provides in part:

> **§ 1. Words denoting number, gender, and so forth**
>
> In determining the meaning of any Act of Congress, unless the context indicates otherwise — ... the word[ ] 'person' ... include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals ....

1 U.S.C. § 1. The MAC contends that this statutory scheme unambiguously establishes that associations such as itself qualify as a "person" for purposes of § 1915(a), and that a federal court is therefore authorized to permit such an association to proceed in forma pauperis.

[2] This position was first set forth in a dissenting opinion by Chief Judge Bazelon of the District of Columbia Court of Appeals in *S.O.U.P., Inc. v. F.T.C.*, 449 F.2d 1142, 1143-45 (D.C. Cir. 1971) (per curiam) (Bazelon dissenting).[2] The majority in *S.O.U.P.* assumed without deciding that corporations could proceed in forma pauperis, but denied the motion on the grounds that the particular corporation involved had not submitted sufficient evidence of its indigency. *Id.* at 1142.

[2]Two district court have subsequently followed Judge Bazelon's lead. *See Harlem River Cons. Co-op. v. Assoc. Grocers, Etc.*, 71 F.R.D. 93 (S.D.N.Y. 1976); *River Valley, Inc. v. Dubuque County*, 63 F.R.D. 123 (N.D. Iowa 1974).

Chief Judge Bazelon, believing "that the statute does apply to corporations and that the petitioner has satisfied all reasonable standards which might be applied to test such applications," *id.* at 1143 (Bazelon dissenting), wrote a persuasive dissent. We quote in full his concise and compelling discussion of the language of § 1915(a):

> Section 1915(a) provides that a federal court may authorize litigation without prepayment of costs "by a *person* who makes affidavit that he is unable to pay such costs or give security therefor." [Emphasis added.] The statute's reference to "person" does not indicate, however, that the section has no application to corporations. On the contrary, the statutory guidelines for the interpretation of Congressional acts, 1 U.S.C. § 1 (1970), make clear that the term "person" should ordinarily be taken to "include corporations ... as well as individuals." Moreover, there is no indication in the legislative history of § 1915 that Congress intended to depart from this well-established canon of statutory construction.

Id. (footnote omitted). We agree that the plain meaning of § 1915(a), when read in conjunction with 1 U.S.C. § 1, indicates that associations can proceed in forma pauperis if they meet the indigency requirements.[3]

To overcome the normal presumption in favor of a statute's plain meaning, the appellee argues that the legislative history reveals "no indication whatsoever that Congress intended to extend § 1915 to corporations." This peculiar argument —

[3]We attribute no significance to the fact that *S.O.U.P.* involved a corporation, whereas this case involves an association or an organization. While such distinctions may affect a reviewing court's inquiry into a moving party's indigency status, they do not affect the threshold question we decide here, which is whether non-natural persons, however classified, may proceed in forma pauperis under § 1915(a).

peculiar because, as we have just seen, the statutory language itself expressly indicates such an intent — is based on the statute's legislative history, or, more specifically, on its amendment in 1959.

From the time the in forma pauperis statute was first enacted in 1892 until 1959, it authorized federal courts to permit a "citizen" to proceed without paying fees and costs. In 1959, however, Congress, in response to a suggestion by the Department of Justice, amended the statute by substituting the word "person" for "citizen." The only piece of legislative history accompanying the amendment is a Senate Report describing its purpose as follows:

> The legislative proposal recommended by the Department of Justice would substitute the word "person" for the word "citizen." *Thus, indigent aliens would be extended the same privilege of proceedings in forma pauperis as is now afforded citizens.* It is the opinion of the Department of Justice that this proposal would be consonant with the ideas or policies of the United States.
>
> In addition, the Judicial Conference of the United States in recommending this legislation pointed out that the distinction between citizens and aliens as contained in existing law may be unconstitutional. Furthermore, it may also be in violation of various treaties entered into by the United States with foreign countries which guarantee to their citizens access of the courts of the United States on the same terms as American citizens.

S. Rep. No. 947, 86th Cong., 1st Sess. 2-4 (1959), *reprinted in* 1959 U.S. Code Cong. & Admin. News 2663, 2664 (emphasis added). The Report does not discuss the statute's applicability to associations, and it does not mention 1 U.S.C. § 1. Relying upon this legislative history, the appellees argue that

the amendment's sole purpose was to extend the coverage of § 1915(a) to both citizens and aliens, and hence that Congress never intended it to apply to associations such as the MAC.

[3] The appellee is far from alone in reaching the conclusion that this legislative history reveals a congressional intent to deny the benefits of § 1915 to all but natural persons (i.e. citizens and aliens). A majority of the courts that have addressed the question have also concluded, in reliance to a greater or lesser extent on this legislative history, that federal courts are not authorized to permit associations or corporations to proceed in forma pauperis.[4] Typical of the reasoning of these courts is the following passage from the only circuit court (the Fifth) that has confronted the issue squarely:

> This legislative history is compelling. We would be impermissibly reading more into the statute than Congress intended if we were to hold that the 1959 amendment added corporations as well as aliens to the list of those entitled to seek [in forma pauperis] status.

FDM Mfg., 855 F.2d at 214.

II.

[4] With all due respect to the courts that have reached a

[4] *FDM Mfg. Co., Inc. v. Scottsdale Ins. Co.*, 855 F.2d 213, 214-15 (5th Cir. 1988) ("legislative history is compelling"); *Honolulu Lumber Co., Ltd. v. Am. Factors, Ltd.*, 265 F.Supp. 578, 580-81 (D.Hawaii 1966) ("It thus appears that Congress never intended by this single word change in 1959 to extend this privilege to a whole new class of artificial persons."); *Sears Roebuck & Co. v. C.W. Sears Real Estate*, 686 F.Supp. 385, 386-88 (N.D.N.Y.) ("no evidence whatsoever that Congress intended to extend the statute's coverage to corporations"), *aff'd*, 865 F.2d 22 (2d Cir. 1988); *MOVE Organization v. U.S. Dept. of Justice*, 555 F.Supp. 684, 690-92 (E.D.Pa. 1983) (rule that § 1915(a) extends only to natural persons "is the better reading of the legislative history").

contrary conclusion, we find nothing in this legislative history to justify a construction of § 1915 so flatly contrary to the statute's plain meaning. As we noted above, by far the most compelling interpretation of § 1915(a)'s plain meaning is that, when read in conjunction with 1 U.S.C. § 1, "person" refers both to natural persons and to entities such as corporations and associations. We agree with an earlier district court that, in the course of addressing this issue, noted that "Congress may be assumed to have been aware of [1 U.S.C. § 1] at the time of the 1959 amendment to § 1915." *Harlem River*, 71 F.R.D. at 97. After all, that is presumably why Congress chose to codify the canons of statutory construction in 1 U.S.C. § 1 — so that it would be unnecessary to repeat these common principles of interpretation each time it enacts or amends a statute. According to the plain meaning of the statute, then, associations are "persons" that may be authorized to proceed in forma pauperis.

[5] That brings us to the legislative history. We may disregard the plain meaning of a statute only where there is a "clearly expressed legislative intention" contrary to that plain meaning. *Cardoza-Fonseca*, 480 U.S. at 432 n.12. We think that the most that can be said about that history is that it indicates that Congress did not explicitly consider whether the amendment to § 1915(a) would extend the statute's reach beyond citizens and aliens. Such congressional silence does not constitute the type of compelling contrary evidence we must find before abandoning a statute's plain meaning. Accordingly, we hold that § 1915 applies to associations.

III.

We turn to the facts of this case. In general, given the procedural status of this case, we would be hesitant to decide whether the appellant should be permitted to proceed in forma pauperis. Section 1915 typically requires the reviewing court to exercise its sound discretion in determining whether the affiant has satisfied the statute's requirement of indigency.

See, for example, United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981) ("When a claim of poverty is made under section 1915 'it is proper and indeed essential for the supporting affidavits to state the facts as to affiant's poverty with some particularity, definiteness and certainty.'" (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). Because the appellant chose to appeal the district court's denial of its motion rather than to supplement its initial affidavit, we would normally be inclined to remand to the district court for a conclusive determination as to the appellant's indigency status.

[6] However, it is unnecessary to remand this case for that purpose. It is undisputed that the MAC is prohibited by prison regulation from maintaining any assets, including a bank account. Thus, not only is the appellant indigent, but that state of affairs is clearly not due to any effort on the part of its members to obtain the benefits of litigation without bearing the ordinary financial burdens. Accordingly, we find that the MAC has conclusively established that it meets the statute's indigency requirements. On remand, then, the district court shall grant the appellant's motion to proceed in forma pauperis.

We wish to clarify what we do not decide today. Having determined that non-natural persons such as corporations and associations may proceed in forma pauperis if they meet the indigency requirements, the facts of this case do not permit us to delineate the procedure by which reviewing courts are to make that indigency determination. Other courts that have decided this issue have discussed the unique considerations that confront a court in making this determination; we are not unwary of the complexities that might arise in determining whether corporations or associations are indigent, but those issues are not properly before us. And in any case, we do not think it would be wise to attempt a comprehensive test for determining indigency. The nature of that inquiry will vary depending upon the particular characteristics of both the affi-

ant and the case, and we are loath to fetter the discretion of future courts called upon to determine whether a party can satisfy the statutory requirements.[5]

CONCLUSION

We hold that associations are "persons" within the meaning of 28 U.S.C. § 1915(a), and hence that they may proceed in forma pauperis. If we have misread the true intention of Congress, it may of course alter the statute so as to preclude associations from qualifying for in forma pauperis status. Further, we find that the appellant has established its indigency such that it should be permitted to proceed in forma pauperis in this case. The district court's order is REVERSED and this matter is REMANDED for further proceedings.

[5]In particular, although we reject the approach suggested by the district court of reviewing the finances of MAC members to determine whether the association is indigent, we do so only on the ground that members are prohibited by prison regulation from contributing funds to the MAC. We do not decide, as a general matter, the relevance of members' individual finances in determining an association's indigency.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY)
OF SACRAMENTO)

CYNTHIA BAIN, being first duly sworn on oath deposes and states:

I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Suite 511, Sacramento, California 95814.

On January 9, 1992, I served the attached **Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit** in said cause, by placing three true copies thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

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Cynthia Bain
AFFIANT

Subscribed and sworn to before
me this 9th day of January, 1992.

Lucinda Seaton
Notary Public in and for said
County and State

LUCINDA SEATON
NOTARY PUBLIC - CALIFORNIA
County of Sacramento
My Commission Expires 2/2/93